U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: OCT 01 2004

IN RE: Petitioner: [redacted]
Beneficiary

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a youth pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous experience as a youth pastor immediately preceding the petition's filing date.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
> >
> > (II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
> >
> > (III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on October 29, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a youth pastor throughout the two years immediately prior to that date.

Counsel describes the job offer and the beneficiary's experience:

> [The beneficiary's] duties include supervising ten Sunday School teachers, supervising activities of and providing Sunday service to over 70 church members in grades six through twelve, supervising youth retreats and the summer mission. [The beneficiary] has been working for [the petitioner] since September 6, 2000, under his F-1 practical training. On July 26, 2001, [the beneficiary] was granted an R-1 visa. . . .

> [The beneficiary] received . . . a Master of Divinity [degree] on May 12, 2000, from Gordon-Conwell Theological Seminary, Southampton, Massachusetts. While in seminary school in Massachusetts [the beneficiary] acquired ministry experience when he interned at the Korean Church of Boston. [The beneficiary] was also the youth pastor for the Korean Church of Boston from August, 1998, to May, 2000. [The beneficiary] is also a candidate for the Ministry of the Word and Sacrament and should be ordained in June or July, 2002. [The beneficiary] has already taken two exams for the ministry and plans to take the other three in February, 2002.

The director instructed the petitioner to "[s]ubmit a detailed description of the beneficiary's prior work experience" during the qualifying period. In response, the petitioner submits official documentation regarding the beneficiary's seminary studies in Massachusetts, and a copy of the beneficiary's resume, indicating that the beneficiary was a youth pastor in Massachusetts, but the record contains nothing from the Massachusetts church to confirm this work or to clarify the nature or extent of the beneficiary's duties there.

The petitioner did submit a letter from [redacted] of the Presbytery of Boston, indicating that the beneficiary "is a candidate for the Ministry of the Word and Sacrament." The letter does not indicate that the beneficiary has worked for any church in the Boston area.

The director denied the petition, observing that the beneficiary was not yet ordained as of the filing date, and stating that the petitioner has not shown that the beneficiary's studies did not interrupt his work during the qualifying period.

On appeal, counsel maintains that the beneficiary "was performing exactly the same work as the youth pastor for the Korean Church of Boston as a[n] F-1" nonimmigrant. This claim, however, is not corroborated by any documentary evidence, or by statements from anyone with demonstrable first-hand knowledge of the beneficiary's work in Massachusetts. Given the ample evidence that the beneficiary attended the seminary in Massachusetts, the lack of comparable evidence that the beneficiary was a youth pastor there is significant.

Based on the above, we affirm the director's finding that the petitioner has not adequately demonstrated that the beneficiary has continuously worked as a youth pastor throughout the 1999-2001 qualifying period.

We note that, because nothing from any source in Massachusetts indicates that the beneficiary was a youth pastor there at all, there is nothing to show that such duties were full-time. Seminary study, in conjunction with part-time work, is not continuous engagement in religious work. *See Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

We note, also, the petitioner's repeated assertions that, in 2001 and 2002, the beneficiary was preparing for ordination as a minister. The regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien "has been carrying on such . . . work" throughout the qualifying period. An alien who seeks to work as an ordained minister, as this beneficiary clearly intends to do, has not been "carrying on such work" if he was not an ordained minister during the qualifying period. Clearly, the petitioner saw the beneficiary as qualified to be a youth pastor, even before the beneficiary was ordained. The petitioner claims that the beneficiary was even qualified to do this work while still a seminary student. Therefore, the beneficiary's completion of seminary studies and

continued pursuit of ordination are obviously not prerequisites for employment as a youth pastor. We must therefore conclude that the beneficiary's work as a youth pastor was intended only as a stopgap to occupy the beneficiary until such time as he completed his ordination. Thus, the record suggests that the beneficiary seeks ultimately to work in the vocation of an ordained minister, rather than in the occupation of a youth pastor.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.